IN THE HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No. 576 of 2001 (M/B)

Neeraj Upadhayay S/o Sri Bijandra Nath Upadhayay,
R/o Samne Ghat, Lanka,
Varanasi, …… Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Lok Nirman Vibhag, Civil Secretariat,
   Dehradun,
2. Commissioner, Pauri Division
   Pauri Garhwal, Uttaranchal.
3. Executive Engineer, Construction Division-I,
   (National High Way), Public Works Department,
   Roorkee. …….. Respondents

Mr. K.P. Upadhyaya, learned Breif Holder for the State.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Rajesh Tandon,J.

(**Per Hon'ble the Chief Justice)**

1. By the instant writ petition, the petitioner seems to be challenging the order date 31.03.2001 and has also prayed for a direction commanding the opposite parties to accept the highest bid of the petitioner and execute the deed in favour of the petitioner for realization of the toll fee over the bridge in questions. He also asked for an injuction restraining respondents from proceeding with the fresh auction.

2.All the other write petitions connected, which are write petitions No. 575 of 2001 (M/B), 571 of 2001 (M/B) and 39 of 2001 (M/B) pertained to the same subject. It seems that, initially, this court directed to postpone the further auction in writ petition No. 39 of 2001 (M/B), which also pertained to the same subject. However, we find that the writ petition No. 39 of 2001 (M/B) has since withdrawn and the writ petition No. 575 of 2001 (M/B) and 571 of 2001 (M/B) have already been disposed of. Perhaps, since the dismissal orders

were not brought to the notice of the Court, an order dated 01.11.2004 came to be passed in the present write petition, which is as follows.

"Hon'ble Rajesh Tandon, J.
Hon'ble B.C.Kandpal,J.

Heared Sri Paresh Tripathi, learned counsel for the petitioner and learned Standing Counsel.

On the request of learned counsel for the petitioner put up this write petition with writ petition No. 575(M/B) of 2001, 571 (M/B) of 2001, 39 (M/B) of 2001 in the week commencing 6th December,2004.

Sd. Sd.
(B.C.K.,J.) (R.T.,J)"

3. There would, therefore, be no questions of dealing with those petitions.

4. Be that as it may, again, in the present writ petition, the Division Bench of this court reiterated that the interim order should not be continued. It seems that, therefore, the fresh auction must have been held and the matter has become infructuous. In fact, one of the counsel Mr. B.D. Upadhyaya, who is appearing in write petition No. 571 of 2001 (M/B) makes a statement that his writ petition had become infructuous. In that writ petition also the prayer was for permitting the petitioner to collect the toll tax after canceling the order dated 07.04.2001, which was essentially connected with the questions of auction for the rights to collect the toll on a particular bridge . According to Mr. B.D. Upadhyaya, this writ petition had become infructuous and disposed of.

4. In short, the subject of the right to collect the toll tax has become infructuous. The Government also says that the whole matter has become infructuous because the original order restraining the Government from holding a fresh auction has already been vacated by this court on 28.05.2004. As it is if the original injuncation order has been vacated by this Court, there will be no questions of assessing the

rights of the parties in this petition and it shall be open to the parties to pursue their remedies in the proper forum like Civil Court. However, in the wake of vacating of the interim order as regards the holding of the fresh auction, the matter has become infructuous and is declared to be such without prejudice to the rights of the petitioner to pursue his remedies before the proper forum.

5. Accordingly, the writ petition is disposed of.

(Rajesh Tandon,J.)
08.12.2004

(V.S.Sirpurkar, C.J.)
08.12.2004